

1 THE HONORABLE JOHN C. COUGHENOUR

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6 UNITED STATES DISTRICT COURT  
7 WESTERN DISTRICT OF WASHINGTON  
8 AT SEATTLE

9 GUADALUPE A. RAMOS,

CASE NO. C19-0954-JCC

10 Petitioner,

ORDER

11 v.

12 STATE OF WASHINGTON,

13 Respondent.  
14

15 This matter comes before the Court on Petitioner's objections (Dkt. No. 8) to the report  
16 and recommendation ("R&R") (Dkt. No. 7) of the Honorable Michelle L. Peterson, United States  
17 Magistrate Judge. Having thoroughly considered the parties' briefing and the relevant record, the  
18 Court hereby OVERRULES Petitioner's objections and ADOPTS Judge Peterson's R&R.

19 This case is a federal habeas action filed pursuant to 28 U.S.C. § 2254. (Dkt. No. 6.)  
20 Petitioner is currently confined at Coyote Ridge Corrections Center in Connell, Washington. (*Id.*  
21 at 1.) He challenges a 2018 judgment of the Island County Superior Court. (*Id.*) Judge Peterson  
22 recommends dismissing Petitioner's petition without prejudice because he has not exhausted his  
23 state court remedies. (Dkt. No. 7.) In his objections to Judge Peterson's R&R, Petitioner explains  
24 that he does not need to exhaust his state court remedies and that doing so would be futile. (Dkt.  
25 No. 8.)

26 The Court shall not grant a writ of habeas corpus on behalf of a state prisoner unless: (1)

1 the prisoner has exhausted the remedies available in the courts of the state; or (2) there is an  
2 absence of available state corrective process or circumstances exist that render such process  
3 ineffective to protect the rights of the applicant. 28 U.S.C. § 2254(b)(1). It appears Petitioner is  
4 arguing that he is not seeking relief under § 2254, so he does not need to exhaust his remedies  
5 available in state court. (*See* Dkt. No. 8.) But he is seeking relief under § 2254 (*see* Dkt. No. 6),  
6 so he must exhaust his remedies, as that statute requires. *See* 28 U.S.C. § 2254(b)(1).

7 Petitioner simultaneously argues that Washington courts cannot effectively protect his  
8 rights. (*See* Dkt. No. 8.) Specifically, Petitioner appears to argue that because he is challenging a  
9 provision of the Washington Constitution, only a federal court can hear the challenge. (*See id.*)  
10 However, a Washington court is perfectly capable of determining whether provisions of the  
11 Washington Constitution are constitutional. Therefore, Petitioner's objections (Dkt. No. 8) are  
12 **OVERRULED.**

13 A petitioner seeking relief under § 2254 may only appeal a district court's dismissal of  
14 his federal habeas petition after obtaining a certificate of appealability. 28 U.S.C. § 2253(c)(1). A  
15 certificate of appealability may only issue where a petitioner has made "a substantial showing of  
16 the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). In order to make a substantial  
17 showing of the denial of a constitutional right, the petitioner must "demonstrat[e] that jurists of  
18 reason could disagree with the district court's resolution of his constitutional claims or that  
19 jurists could conclude the issues presented are adequate to deserve encouragement to proceed  
20 further." *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003). The Court finds that Petitioner is not  
21 entitled to a certificate of appealability in this matter.

22 For the foregoing reasons, Petitioner's objections (Dkt. No. 8) are **OVERRULED**, Judge  
23 Peterson's R&R (Dkt. No. 7) is **ADOPTED**, and Petitioner's petition for a writ of habeas corpus  
24 (Dkt. No. 6) is **DISMISSED** without prejudice for failure to exhaust state court remedies. The  
25 Court **DENIES** the issuance of a certificate of appealability.

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1 DATED this 2nd day of August 2019.

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5 John C. Coughenour  
6 UNITED STATES DISTRICT JUDGE  
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